

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT WESLEY CHOATE,)	
)	
Petitioner,)	
)	
vs.)	NO. CIV-09-870-D
)	
)	
MARVIN VAUGHN, Warden,)	
)	
Respondent.)	

ORDER

Petitioner, a state prisoner appearing *pro se*, brought this action for a writ of habeas corpus pursuant to 28 U.S.C. §2254. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Robert E. Bacharach for initial proceedings.

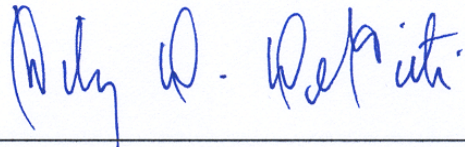
Respondent filed a motion to dismiss. Because he relied on evidence outside the Petition, the Magistrate Judge converted the motion to one seeking dismissal, or in the alternative, summary judgment; he notified the parties of that action. After Petitioner responded to the motion, the Magistrate Judge filed a Report and Recommendation [Doc. No. 17] in which he recommended that summary judgment be granted.

In the Report and Recommendation, the Magistrate Judge advised Petitioner of his right to object to same and scheduled a December 28, 2009 deadline for filing such objections. The Magistrate Judge also advised Petitioner that a failure to timely object would constitute a waiver of his right to further review of the factual findings and legal conclusions contained in the Report and Recommendation.

To date, Petitioner has not filed an objection and has not sought an extension of time in which to do so. Accordingly, the Report and Recommendation [Doc. No. 17] is adopted as though fully set forth herein. Furthermore, the Court agrees that, as set forth in the Report and Recommendation, the undisputed material facts in the record establish that Respondent is entitled to judgment as a matter of law in accordance with Fed. R. Civ. P. 56.

Respondent's motion for summary judgment is GRANTED. Judgment shall be entered in favor of Respondent and against Petitioner.

IT IS SO ORDERED this 13th day of January, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE